IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY SIXTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE Ms. JUSTICE G.ROHINI

WRIT PETITION No. 19521 of 2004

Between:

K.P. Yesu Dass S/o.K.P.Yesaiah
Kambhapadu Village, Macherla Mandal,
Guntur District.

..... PETITIONER

AND

1 The Joint Collector and Addl. District Magistrate (Civil Supplies),
Guntur, Guntur District.
2 The Revenue Divisional Officer (Civil Supplies) Narasaraopet,
Guntur District.
3 The Mandal Revenue Officer (Civil Supplies) Macherla Mandal,
Guntur District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue any writ, order or direction particularly one in the nature of writ of Certiorari calling for the records in Rc.No.1077/2004-B dated 21.7.2004 passed by the 2nd respondent and declare the action of the 2nd respondent in passing the order in Rc.No.1077/2004-B dated 21.7.2004 in suspending the authorization of the Permanent Fair Price Shop Dealership of petitioner without giving reasonable opportunity to the petitioner in stating his case is illegal, violation of Art.21 of Constitution of India consequently quash the same.

Counsel for the Petitioner : Mr.V.PADMANABHA RAO

Counsel for Respondents : G.P. FOR CIVIL SUPPLIES

The Court made the following :

ORDER:

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This writ petition is filed aggrieved by the order of the second respondent-Revenue Divisional Officer dated 21.7.2004 whereunder the authorization of the petitioner was suspended pending enquiry into allegations of diversion of P.D.S. rice to the black market.

Heard the learned counsel for petitioner and the learned Government Pleader appearing for the respondents.

Admittedly, the petitioner has already filed an appeal before the first respondent-Joint Collector against the impugned order dated 21.7.2004 and the same is pending. Hence, he cannot be permitted to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India while the Statutory Appeal is pending.

However, the learned counsel contends that under the impugned order dated 21.7.2004, there was also a direction to the third respondent-Mandal Revenue Officer to file a criminal case against the petitioner and to recover triple the amount under Revenue Recovery Act. He contends that such an action is not permissible under law, since the petitioner was not afforded any opportunity to rebut the allegations and no enquiry was conducted into the said allegations.

Having regard to the nature of the allegations made against the petitioner, though I am not inclined to hold that the first respondent committed any error in not granting the stay of operation of the order of suspension, I find force in the contention of the learned Counsel for the petitioner that the direction issued by the second respondent-Revenue Divisional Officer to the third respondent-Mandal Revenue Officer to initiate criminal proceedings against the petitioner and to recover triple the amount under Revenue Recovery Act, which action is in the nature of substantive punishment, is not permissible under law without affording any opportunity to the petitioner to rebut the allegations.

In the circumstances, I deem it appropriate to dispose of the writ petiton with a direction to the first respondent-Joint Collector to dispose of the appeal filed by the petitioner as expeditiously as possible preferably within a period of four weeks from the date of receipt of a copy of this order. Till the disposal of the said appeal, the impugned order to the extent of directing the third respondent-Mandal Revenue Officer to initiate criminal case against the petitioner and to recover triple the amount under Revenue Recovery Act, shall not be given effect to. No costs.

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G.ROHINI, J

Date: 26.10.2004

Note:

C.C. in (3) days.

B/o

DA

To

1 The Joint Collector and Addl. District Magistrate (Civil Supplies), Guntur, Guntur District.
2 The Revenue Divisional Officer (Civil Supplies) Narasaraopet, Guntur District.
3 The Mandal Revenue Officer (Civil Supplies) Macherla Mandal, Guntur District.

4 Two CCs to the G.P. for Civil Supplies, High Court Buildings, Hyderabad (OUT).

5 Two CD copies.